BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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In The Matter of	)	
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Amendment of Part 90 of the	)	**PR Docket No. 93-144**
Commission's Rules to Facilitate	)	**RM-8117, RM-8030**
Future Development of SMR Systems	)	**RM-8029**
in the 800 MHz Frequency Band	)	
and		
Implementation of Section 309(j)	)	
of the Communications Act	)	
Competitive Bidding	)	**PP Docket No. 93-253**
800 MHz SMR	)	

To: The Commission

REPLY COMMENTS OF UNITED STATES SUGAR CORPORATION

United States Sugar Corporation ("U.S. Sugar"), by its attorneys, hereby respectfully submits these Reply Comments in response to the Comments filed with the Federal Communications Commission ("FCC" or "Commission") in the subject proceeding on January 5, 1995, that addressed issues raised in the Further Notice of Proposed Rule Making ("Further Notice") adopted by the Commission on October 20, 1994.[1/]

[1/] 59 Fed. Reg. 60111 (November 22, 1994). The deadline for filing Reply Comments in this proceeding was extended from January 20, 1995 to March 1, 1995. Order, PR Docket No. 93-144, PP Docket No. 93-235 (Adopted and Released: January 18, 1995).

I. PRELIMINARY STATEMENT

1. U.S. Sugar is America's largest producer of sugar cane and raw sugar, and one of the country's leading diversified, privately-held agricultural firms. Its primary business interests, other than sugar cane production, include growing and processing citrus fruits, and, to a lesser extent, plastics. All of the company's operations are situated in South Central Florida. From its headquarters in Clewiston, Florida, U.S. Sugar maintains 180,000 acres of sugar and citrus in Hendry, Glades and Palm Beach Counties.

2. U.S. Sugar operates a 21-channel Specialized Mobile Radio ("SMR") system with coverage limited to the Clewiston area. The system is used for internal communications to support general operations, including the dispatch of personnel, equipment and supplies required in the cane fields and citrus groves. Excess capacity on the SMR system is leased to small businesses and public safety entities in the Clewiston area. Approximately 88 paying subscribers comprised of local agricultural businesses, law enforcement agencies, and small trucking and construction companies use the system predominately for dispatch services, employing almost 800 of the system's nearly 1,350 mobile units. Approximately 13% of this leased

capacity is interconnected with the public switched telephone network -- a testament to the existence of several alternatives to U.S. Sugar's SMR system for mobile access to the local and interexchange telephone services. U.S. Sugar's SMR system generates an annual revenue of approximately $155,000 from the provision of service to local entities. This revenue is of virtually no significance to the financial interests of the corporation, but U.S. Sugar makes service available because it has the excess capacity and it benefits the community.

3. The FCC seeks to treat wide-area SMRs in the same fashion as similar CMRS providers in order to meet the Congressional mandate for regulatory parity for all CMRS providers. The Third Report and Order,[2/] released by the FCC on September 23, 1994 in the Docket No. 93-252 matter, was adopted to satisfy requirements imposed by the Omnibus Budget Reconciliation Act of 1993[3/] that the FCC implement changes to its technical, operational and licensing rules to establish regulatory symmetry among similar CMRS providers. In that Third Report and Order, the FCC stated that 800 MHz SMRs compete, or have the potential to compete, with wide-

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[2/] Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services.

[3/] Pub. L. No. 103-66, Title VI § 6002(b), 107 Stat. 317, 392 (1993).

area CMRS providers, but that the interests of small SMRs need to be considered.[4/] In the Further Notice, the FCC proposed rules to implement regulatory parity while meeting the needs of small SMR systems.

4. U.S. Sugar's 800 MHz telecommunications system is the epitome of the traditional SMR system, designed to provide dispatch service to a single, well-defined locale. Congress did not instruct the FCC to restrict the growth and viability of the small SMR industry in order to create regulatory parity between wide-area SMRs, cellular, PCS, and other commercial mobile radio services. Mandatory relocation of small SMR incumbents would harm the public interest by placing an undue burden on small SMRs through imposition of an imbalanced bargaining structure, the unwarranted disruption of services, potential equipment difficulties, and placement in less desirable spectrum with limited potential for future growth. Regardless of whether the FCC adopts a mandatory relocation policy, incumbent licensees must be able to operate "dual" systems during the transition period, one in the upper block and one in the lower block. Without the opportunity to operate dual systems a viable transition cannot occur. Should mandatory relocation be implemented, the MTA licensee must remit to

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[4/] Third Report and Order at 55.

the incumbent a premium payment above and beyond the calculable relocation costs.

5. U.S. Sugar is very concerned with certain elements of the proposal because the migration or "retuning" plan is ultimately mandatory in character. The vast majority of Commentors agree that mandatory retuning is not a good idea. U.S. Sugar opposes mandatory retuning because it places small SMRs at a distinct operational and negotiating disadvantage, and because many of the more vexing complexities involved in implementing any successful and fair "retuning" plan do not appear to have been considered by the Commission, let alone addressed in the Further Notice. Moreover, the few proponents of mandatory retuning failed to present a justifiable, legal or reasonable, basis for their position.

II. REPLY COMMENTS

A. Mandatory "Retuning" Is Not In the Public Interest or Statutorily Mandated

6. U.S. Sugar presents these Reply Comments primarily to rebut the contention that mandatory retuning is a viable proposal. U.S. Sugar respectfully asks the Commission to review its initial Comments concerning other issues raised in the Further Notice.

7. Of the Commentors which addressed the mandatory retuning proposal, the vast majority opposed it.[5/] Additionally, the Commentors which aggressively support mandatory retuning,[6/] do so under flawed assumptions. Nextel, the company responsible for asking the FCC to consider this relocation, claims that mandatory retuning of incumbents from the MTA license block is statutorily mandated.[7/] Nextel, however, fails to cite the statute or statutory language from which it makes this startling claim. U.S. Sugar submits, rightly, that such a statute does not exist. Spectrum Resources states that mandatory relocation is a "win-win" proposition for all parties involved.[8/] Not

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[5/] A surprisingly diverse group of Commentors opposed the mandatory relocation scheme, for example, including: wide area SMRs (Dial Call Communications, Inc., at 6-7; and Pittencrief Communications, Inc. at 11); a Federal Government Agency (United States Small Business Administration at 26-28); small SMRs (SMR WON at 47-49; U.S. Sugar; Russ Miller Rentals at 12); and a variety of associations (Utilities Telecommunications Corporation at 5; American Petroleum Institute at 4, 6-7). Motorola, Inc. and the American Mobile Telecommunications Association were predominately neutral on the issue of advocating for or against mandatory relocation while the Council of Independent Communication Suppliers ("CICS") warned that implementing mandatory relocation would be difficult. Comments of CICS at 3.

[6/] See Comments of Nextel Communications, Inc. ("Nextel") at 38-40; OneComm Corporation at 15-24; and Spectrum Resources, Inc. at 4-8.

[7/] Comments of Nextel at 27.

[8/] Comments of Spectrum Resources at 5.

one small SMR adopts this stance. Mandatory, instead of voluntary, retuning schemes work to skew the negotiating field in favor of the MTA-licensee. The MTA-licensee can use the threat of a mandatory move when negotiating so-called "voluntary" agreements. Small SMRs have no such recourse at the negotiating table. The end result would be a loss to the small SMR who was outmaneuvered before even sitting down at the table.

8. U.S. Sugar opposes the adoption or implementation of any mandatory relocation plan. U.S. Sugar reiterates its recognition that there are strong competitive and financial factors that favor use of spectrum auctions. Yet, it is U.S. Sugar's opinion that the success of auctions does not hinge on mandatory relocation and that small SMRs' entitlement to certain "basic dignities" must not be overlooked by the evident auction fervor. First, the Budget Act did not direct the FCC to implement competitive parity between cellular, wide-area SMR, PCS and other technologies at the expense of destroying the viability of the traditional SMR industry. Second, small incumbent SMRs have legitimate operating needs and growth expectations which serve the public interest, are ongoing, and should not be regulated out of existence. Mandatory movement to an inferior spectrum location potentially plagued by equipment difficulties, limited future growth patterns and other

problems, obviously harms and disadvantages small SMRs. Mandatory retuning saddles the incumbent SMR with the burden of substantiating inequities and losses. Thus, small SMRs, which are often on limited budgets, will be pitted against large communications corporations in attempting to prove that the proposed retuning plan is unfair.

9. Finally, the viability of spectrum auctions would not be derailed by the lack of a mandatory retuning provision. Attractive and reasonable voluntary relocation incentives will prompt some small SMRs to move to the lower block. However, the certainty of mandatory relocation places incumbent SMRs at a distinct negotiating disadvantage. Simply put, a fair system would allow the market to decide whether the voluntary relocation incentives offered by the MTA SMR are reasonable. Mandatory retuning is not the proper vehicle for engendering incumbent movement from the upper block to the lower block.

III. CONCLUSION

10. Contrary to Nextel's claim, Congress did not instruct the FCC to impose mandatory retuning and thus restrict the growth and viability of the small SMR industry in order to create regulatory parity between wide-area SMRs, cellular, PCS, and other commercial mobile radio services.

Mandatory relocation of small SMR incumbents would harm the public interest by placing an undue burden on small SMRs through imposition of an imbalanced bargaining structure, the unwarranted disruption of services, potential equipment difficulties, and placement in less desirable spectrum with limited potential for future growth.

WHEREFORE, THE PREMISES CONSIDERED, United States Sugar Corporation respectfully submits the foregoing Reply Comments and requests that the Federal Communications Commission take action in a manner consistent with the views expressed herein.

Respectfully submitted,

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